UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

KEITH REYNOLDS,

: CASE NO. 1:08-CV-1024

Petitioner,

.

v. : OPINION & ORDER

[Resolving Doc. No. 1]

MICHAEL SHEETS,

.

Respondent. :

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Petitioner Keith Reynolds petitions for a writ of habeas corpus under 28 U.S.C. § 2254. [Doc 1.] Reynolds seeks relief from two concurrent five-year sentences following his November 3, 2006 convictions on two counts of illegal conveyance of drugs onto detention facility grounds. [Doc. 1.] Reynolds raises two grounds for relief: (1) ineffective assistance of trial counsel for failure to challenge for cause a juror who knew Reynolds through employment at the Lebanon Correctional Facility, who had previous conflict with Reynolds, and against whom Reynolds had filed grievances; (2) ineffective assistance of trial counsel for failure to object to inadmissible and prejudicial testimony at trial. [Doc. 1 at 5-8, 10.]

On May 6, 2008, the Court referred this matter to Magistrate Judge James S. Gallas under Local Rule 72.2. [Doc. 7.] The matter was later reassigned to Magistrate Judge Benita Y. Pearson for preparation of a Report and Recommendation. On November 23, 2010, Magistrate Judge Pearson issued a Report and Recommendation that recommended denying Reynolds's petition on its merits and with prejudice. [Doc. 12.] As to Reynolds's first ground for relief, Magistrate Judge

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Pearson found that the failure to challenge the juror for cause did not rise to the level of

constitutionally deficient assistance under the Strickland v. Washington, 466 U.S. 668 (1984)

standard. The Magistrate Judge noted that the court, and Reynolds's counsel, had extensively

questioned the juror during voir dire, that the juror did not remember encountering Reynolds, and

that the juror said he had no previous conflict with Reynolds. [Doc. 12 at 8-9.] The Magistrate Judge

also noted that Reynolds had offered no evidence that excusing the juror would have affected the

outcome of Reynolds's case. As to the second ground for relief, Magistrate Judge Pearson found that

Reynolds had not suffered prejudice from the alleged ineffective assistance, as there was strong

evidence of Reynolds's guilt aside from the purportedly objectionable testimony. [Doc. 12 at 10-11.]

The Federal Magistrates Act requires a district court to conduct a de novo review only of

those portions of a Report and Recommendation to which the parties have made an objection. 28

U.S.C. § 636(b)(1)(C). Parties must file any objections to a Report and Recommendation within

fourteen days of service. *Id.* Failure to object within this time waives a party's right to appeal the

magistrate judge's recommendation. Fed. R. Civ. P. 72(b)(2); see also <u>Thomas v. Arn</u>, 474 U.S. 140,

145 (1985); United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a

district court may adopt the magistrate judge's report without review. See Thomas, 474 U.S. at 149.

In this case, neither party has objected to the Magistrate Judge's recommendation. Moreover,

having conducted its own review of the record and the parties' briefs in this case, the Court agrees

with the conclusions of Magistrate Judge Pearson.

Accordingly, the Court ADOPTS in whole Magistrate Judge Pearson's Report and

Recommendation and incorporates it fully herein by reference, and **DENIES** Reynolds's habeas

petition. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this

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decision could not be taken in good faith, and no basis exists upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

Dated: December 22, 2010 s/ James S. Gwin

JAMES S. GWIN UNITED STATES DISTRICT JUDGE